

Jb61huds

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

18 Cr. 454 (KPF)

6 DARRELL HUDSON,

7 Defendant.

Sentencing

8 -----x
9 New York, N.Y.
10 November 6, 2019
11 3:04 p.m.

12 Before:

13 HON. KATHERINE POLK FAILLA,

14 District Judge

15 APPEARANCES

16 GEOFFREY S. BERMAN

17 United States Attorney for the
18 Southern District of New York

19 BY: FRANK J. BALSAMELLO

20 Assistant United States Attorney

21 MOSKOWITZ & BOOK, LLP

22 Attorneys for Defendant

23 BY: AVRAHAM C. MOSKOWITZ, ESQ.

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for
3 the record, beginning with the government.

4 MR. BALSAMELLO: Good afternoon, your Honor. Frank
5 Balsamello for the United States.

6 THE COURT: Good afternoon. Thank you.

7 MR. MOSKOWITZ: Good afternoon, your Honor. Avi
8 Moskowitz on behalf of Mr. Hudson, who's seated to my left.

9 THE COURT: Sir, good afternoon to you.

10 Mr. Hudson, good afternoon to you.

11 THE DEFENDANT: Good afternoon.

12 THE COURT: Okay. Thank you very much.

13 Let me please begin by making sure I have the
14 materials that I should have. I have a presentence
15 investigation report that is dated August 28th of 2019; I have
16 a defense sentencing submission that is dated October 23rd of
17 2019, with letters from supporters; I have a government
18 sentencing submission that is dated October 30th of 2019; and I
19 have a supplemental defense submission that is dated
20 November 4th.

21 Mr. Moskowitz, should I have anything else on behalf
22 of your client?

23 MR. MOSKOWITZ: No, your Honor.

24 THE COURT: Thank you.

25 Mr. Balsamello, anything else on behalf of the

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1 government?

2 MR. BALSAMELLO: No, your Honor.

3 THE COURT: Mr. Balsamello, has the government had a
4 sufficient opportunity, under Federal Rule of Criminal
5 Procedure 32, to review the presentence investigation report in
6 this case?

7 MR. BALSAMELLO: We have.

8 THE COURT: Do you have any objections to its
9 contents?

10 MR. BALSAMELLO: We don't.

11 THE COURT: It does recite a different guidelines
12 calculation, am I correct?

13 MR. BALSAMELLO: It does.

14 THE COURT: And I understood from your sentencing
15 submission that you agree with that guidelines calculation.

16 MR. BALSAMELLO: We accept their criminal history
17 calculation as III as opposed to IV.

18 THE COURT: Okay. Thank you very much, sir.

19 Mr. Moskowitz, similar questions. Have you and has
20 Mr. Hudson had a sufficient opportunity, under Federal Rule of
21 Criminal Procedure 32, to review the presentence investigation
22 report in this case?

23 MR. MOSKOWITZ: Yes, your Honor.

24 THE COURT: Do you have any objections to its
25 contents?

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1 MR. MOSKOWITZ: No, your Honor.

2 THE COURT: I am imagining that you agree with the
3 government that the probation office has accurately or perhaps
4 more accurately calculated your client's criminal history
5 category.

6 MR. MOSKOWITZ: That's correct.

7 THE COURT: As well, sir, have you and your client had
8 an opportunity to review the conditions that are contained at
9 the back of the presentence investigation report, beginning at
10 page 20? I call them and you will know them as the mandatory,
11 standard, and special conditions of supervised release.

12 MR. MOSKOWITZ: Yes, your Honor, we've reviewed the
13 entire report.

14 THE COURT: Do you have any objection to any of the
15 proposed special conditions?

16 MR. MOSKOWITZ: No, your Honor.

17 THE COURT: I will ask you and I will ask your client,
18 are you comfortable, sir, if I refer to them collectively as
19 the mandatory, standard, and special conditions of supervised
20 release without reading them individually into the record?

21 THE DEFENDANT: Yes. Yes.

22 THE COURT: I think I understood the "yes" from you
23 and your client to mean yes, you reviewed these things and you
24 don't need me to read them word for word into the record.

25 MR. MOSKOWITZ: That is correct, your Honor.

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1 THE COURT: That is fine. I can tell by the grins on
2 your faces that you understood what I was saying.

3 Mr. Balsamello, does the government seek restitution
4 or forfeiture in this case?

5 MR. BALSAMELLO: No, your Honor.

6 THE COURT: Then lest I forget to do so, I will adopt
7 the presentence investigation report, the factual statements
8 that are contained in it and the guidelines calculations that
9 are contained in it as well.

10 Mr. Balsamello, a couple of housekeeping matters,
11 please, sir.

12 I'm a little bit confused, but I think it can be
13 remedied. I believe the government states in its letter to me
14 that Mr. Hudson has 22 arrests, or -- yes, more than 20 arrests
15 and eight convictions, distinguishing him from Mr. Padilla, who
16 had 18 arrests and four convictions. I don't know that all the
17 arrests are contained in the presentence investigation report.
18 If they are, please let me know that they are, and if they are
19 not, could you let me know where that number came from.

20 MR. BALSAMELLO: They certainly are all not in the
21 presentence report. Probation never includes arrests that are
22 sealed or for whatever other reason don't appear in the rap
23 sheet that probation can access. So we have unsealed records.

24 THE COURT: One moment, please, sir. Let's pause for
25 a moment, let folks sit down.

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1 Thank you.

2 I am understanding from the hand gestures I am
3 receiving that the folks who are here are here to support
4 Mr. Hudson this afternoon. They are certainly welcome.

5 AUDIENCE MEMBERS: Thank you.

6 THE COURT: Mr. Hudson, you see you have people here
7 for you?

8 THE DEFENDANT: Yes.

9 THE COURT: Thank you.

10 Mr. Balsamello, I'm going to let you continue, please,
11 and if you need to restart, I certainly understand.

12 MR. BALSAMELLO: No, your Honor.

13 So the probation office goes by the rap sheet that
14 they have. We have unsealed records from the New York City
15 Police Department that list all arrests regardless of whether
16 they have been sealed. Sometimes cases are sealed because they
17 result in a conditional discharge, and if the defendant
18 completes the period during which he's expected not to commit
19 new crimes, he is allowed to withdraw his plea or things like
20 that. There are various reasons the state may seal or dispose
21 of the case. It may have been dismissed outright.

22 THE COURT: But let me pause for a moment, just to
23 push back. Might one reason for the dismissal and sealing of
24 the case be a recognition that perhaps they got the wrong man
25 or that there was something infirm with the arrest itself?

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1 What I'm going to -- and I'm sure you'll figure this out on
2 your own -- is that someone who's been arrested 20 times with
3 no convictions is arguably differently situated than someone
4 who's been arrested 20 times with 20 convictions.

5 MR. BALSAMELLO: Certainly.

6 THE COURT: And so I don't know what you wish me to
7 make of arrests that are not contained in the presentence
8 investigation report and that did not result in any criminal
9 justice sentence.

10 MR. BALSAMELLO: I think there are two things I would
11 suggest your Honor to take note of. First is just the
12 consistency of law enforcement contact, and regardless of
13 whether he had committed the crime for which he was arrested on
14 that 20th arrest, he nevertheless, having been put in handcuffs
15 20 times, continued to commit criminal activity in the same
16 community where he had been arrested so many times before. So
17 simply the number of contacts with law enforcement has not
18 acted as a deterrent, regardless of whether the conduct
19 underlying those arrests -- whether the arrests were valid,
20 whatever they were for, the mere occurrence of the arrests and
21 detention on some kind of charge had no effect on Mr. Hudson in
22 terms of deterrence. That's one thing I would suggest your
23 Honor could draw from it.

24 The second thing, and actually, the primary reason, or
25 a primary reason that I cited it here is that I believe

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1 Mr. Moskowitz had compared Mr. Hudson to Mr. Padilla in terms
2 of their arrests or convictions. Mr. Moskowitz, probably
3 looking at our sentencing submission or maybe the defense
4 sentencing submission, and he made a comparison between the
5 two, and so I was highlighting the difference. To the same
6 degree that 12 of Mr. Hudson's arrests didn't result in
7 conviction, 14 of Mr. Padilla's didn't. I'm simply
8 demonstrating in that comparison, in that statement, at least,
9 that if we're looking at data points with those two defendants
10 in the case, Mr. Hudson has been both arrested and convicted
11 more times than Mr. Padilla.

12 THE COURT: I see. Is there a reason -- well, there
13 is a reason, of course. Mr. Padilla had a larger quantity
14 attributed to him than Mr. Hudson, am I correct?

15 MR. BALSAMELLO: Yes.

16 THE COURT: And yet I thought I understood from your
17 submission that in part Mr. Hudson was a supplier to
18 Mr. Padilla. Am I also correct?

19 MR. BALSAMELLO: Yes.

20 THE COURT: Okay.

21 MR. BALSAMELLO: I want to make sure the word
22 "supplier" is sort of understood in the context of the way
23 these guys operated. He was not supplying Mr. Padilla kilos at
24 a time. We're not talking about sort of trafficker-level
25 duffel bags full of drugs here, but he would be supplying --

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1 they often did flip, where someone who was effectively a
2 customer would get enough product or bring a customer to get
3 his own and serve the customer that he was bringing to, in this
4 case, Mr. Hudson. So we're talking still about street-level
5 quantities where Mr. Padilla was sort of facilitating further
6 sales or getting from Mr. Hudson to make his own sales of
7 street-level quantities.

8 THE COURT: And that's my question. I want to make
9 sure I understand precisely what you mean when you use the term
10 "flips." And you may have already told me all that I need to
11 know about it, but I am going to ask you please to repeat
12 yourself just so that there's no misapprehension on my part as
13 to what you mean when you use the term.

14 MR. BALSAMELLO: This is what we understand from the
15 wiretaps in the case. We're listening to calls, and from the
16 way the cooperators explain them, and it's not -- I don't know
17 that there's sort of a fixed, rigid way that it was done or if
18 it was sort of a term used that could apply to a couple of
19 slight variances. But if Mr. Padilla wanted product for
20 himself to use but didn't have the full amount to pay for what
21 he wanted for himself, and had another customer, knew someone
22 else who wanted also, he could facilitate that person getting
23 from whoever Mr. Padilla was going to get it from at that
24 time -- in some instances it was Mr. Hudson -- and by
25 facilitating an additional sale, he would be getting credit,

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1 he'd be paying less for his own product. I think sometimes
2 that was done with actually bringing a customer to the person
3 who was selling. I think it could also have been accomplished
4 by more or less consignment-type relationship between the
5 person who was giving the flip and the person receiving it. So
6 Mr. Padilla could have received the product up front or paid
7 half for it and made his money back when he was reselling to
8 someone else. It accomplishes the same thing as getting
9 product on consignment. But we're talking about I think more
10 transaction-by-transaction street-level quantities as opposed
11 to a consignment relationship, where someone's getting 10 grams
12 and then pays back a thousand dollars later. Here I think
13 we're talking more a few bags at a time and flipping them to
14 another customer.

15 THE COURT: Excuse the analogy, sir.

16 MR. BALSAMELLO: Sure.

17 THE COURT: If I refer someone to my chiropractor, my
18 next adjustment is discounted or may even be free. Is that
19 what you're talking about hear? By bringing another customer,
20 the charge that you yourself would be assessed is lessened?

21 MR. BALSAMELLO: I think so. From the calls, from the
22 way they talked about them, that sounds like what may have been
23 occurring. We also have spoken to a witness who I think used
24 the term also to refer to -- it doesn't quite work with a
25 chiropractor service, but if Mr. Hudson fronted work, fronted

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1 product to Mr. Padilla --

2 THE COURT: Yes.

3 MR. BALSAMELLO: -- at a discount, and then he was
4 able to resell it to make his money back. So I think there are
5 different ways. There may have been a slight variance in terms
6 of what it meant. At the end of the day, the material contours
7 here are that Mr. Hudson was selling to Mr. Padilla and
8 providing product to Mr. Padilla, either directly to be given
9 to another customer or to another customer who was coming with
10 Mr. Padilla.

11 THE COURT: I see. Okay.

12 MR. BALSAMELLO: I will note also that part of the
13 difference in the drug weight accounts for the duration, and
14 there were a number of convictions for Mr. Padilla dating back
15 I think earlier than the closest relevant conduct or the most
16 distant relevant conduct for Mr. Hudson. Mr. Padilla had older
17 relevant conduct. So we were looking at an aggregating weight
18 over a longer period of time for Mr. Padilla. In terms of the
19 day-to-day, the difference in weight was not intended to
20 reflect the difference in their day-to-day within the
21 conspiracy period specifically. As noted, just in terms of the
22 number of buys we had and the wire intercepts, there's no
23 indication that Padilla was moving more product than Mr. Hudson
24 was during those years.

25 THE COURT: But it seems there was a bit of a tradeoff

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1 because Mr. Padilla had a higher quantity but a lower criminal
2 history, because were the arrests folded in or considered
3 relevant conduct to the case?

4 MR. BALSAMELLO: Correct. And that's why the
5 weight -- under historical arrests like that that we deem
6 relevant, the obvious part of that is then acknowledging the
7 fact that he was engaged in drug sales in the same course of
8 conduct dating back that far, and so the weight is obviously
9 increased as part of that.

10 THE COURT: Okay. All right. One moment, please,
11 sir.

12 MR. BALSAMELLO: Yes.

13 THE COURT: Mr. Balsamello, I'll hear you now on
14 sentencing. And again, because we're still relatively new into
15 the sentencing in this case, I want to make sure I understand
16 the government's position as to Mr. Hudson's significance, his
17 criticality to the charged conspiracy, any role that he might
18 have. I do see a criminal history that includes episodes of
19 violence and episodes of possession of a weapon, which is, of
20 course, a cause for concern to me. I did not understand that
21 there was any violence by Mr. Hudson or even a threat of
22 violence in the charged conspiracy. Separate from that,
23 anything else you'd like me to know. Thank you.

24 MR. BALSAMELLO: Thank you, your Honor.

25 So I'll start with I think, generally speaking, about

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1 the seriousness of the conduct, and I'll address some of the
2 questions you just asked in that context.

3 I believe when we were here with Mr. Padilla, your
4 Honor asked a very similar question about sort of whether
5 anything can be drawn from the ordering of the defendants on
6 the indictment and how do they fall here. And I believe my
7 answer then was that below Mr. Nelson, Mr. Crooms, and
8 Mr. Corley, they could have been shuffled in a lot of different
9 ways. They are more or less the dealers who were selling those
10 three individuals' products. Mr. Nelson I think at times
11 supplied Mr. Crooms and Mr. Corley, and Mr. Corley and
12 Mr. Crooms then supplied other people below them. Mr. Nelson
13 also sometimes directly supplied people who were -- to all of
14 them. Mr. Hudson was one of the dealers there. He was selling
15 day in, day out, I think as indicated by the fact that in the
16 course of this investigation alone, he made 18 sales to an
17 undercover officer or a confidential informant, so whenever he
18 was looked for by someone either with law enforcement or acting
19 on law enforcement's behalf to sell product, he did so. He had
20 crack products. He also sold -- I believe in one or two of the
21 transactions there was a quantity of heroin that was sold. So
22 he was selling multiple drugs, and he was doing so routinely.
23 That was a means of making money, day in, day out, for
24 Mr. Hudson. And the effect that that has on the community, it
25 sounds -- I know we discussed this at prior sentencing as

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1 well. People below the supplier level, even the street-level
2 dealers who may not be, you know, making an enormous fortune
3 from the activity, have an incredibly harmful effect on this
4 community. We're talking about apartment buildings that are
5 not doomed based on where they are or how they're constructed.
6 These buildings that we call "projects" and then just sort of
7 assign a label, as if whatever happens there happens because
8 they are "the projects" or they're "the houses." It's almost
9 talked about like, well, of course there's drug activity there.
10 That's not an automatic thing. Mr. Hudson is one of the
11 people, the other conspirators in this case are the people who
12 park in the hallways of these buildings, who cook the products,
13 who, day in and day out, when parents are taking their kids to
14 school, when people are going to and from work -- and there are
15 law-abiding people in these communities -- when those people
16 are going about their lives, they're passing Mr. Hudson and
17 other defendants in this case slinging drug products. And
18 while Mr. Hudson is not, as part of this case, known to have
19 engaged in drug-related violence -- your Honor is correct, we
20 don't have a firearm enhancement here or any acts of
21 violence -- the conspiracy itself and drug activity in the
22 Lambert Houses generally has spawned a great deal of violence.
23 And it is something that responsibility for always becomes so
24 diffuse because everyone who deals, who doesn't personally
25 perpetrate an act of violence, says, well, I wasn't the one

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1 with the gun, I didn't have anything to do with that, but the
2 drug trade in these places, it's an economy, it's a market, and
3 Mr. Hudson certainly was a part of that, and there have been
4 shootings there, there has been significant violence there in
5 recent years.

6 Mr. Hudson does have a significant criminal history.
7 He does have eight convictions. Putting completely to the side
8 arrests that didn't result in convictions, he has eight
9 convictions. One of them was for a firearm in 2013. He was
10 sentenced to a year. That obviously did not accomplish the
11 goals of sentencing. He was not deterred from that. One of
12 his more recent arrests resulted in a one-year conditional
13 discharge. And one of the conditions, at least, that
14 Mr. Hudson should have been abiding by to get that case
15 discharged and sealed, as I believe it was, was that he not
16 commit new crimes, and I believe during the year period while
17 he was under that condition, he made 16 of the 18 controlled
18 sales. So while already being sanctioned by courts, while
19 already being caught by law enforcement for these things,
20 Mr. Hudson kept doing it. Part of the issue is how many
21 arrests and how many cases like this in the state just go on
22 and on until someone gets here and then is facing what is, I
23 completely acknowledge, a significantly longer guidelines
24 sentence than any equivalent state case he has faced. But he
25 has time and again faced these, faced state charges for drug

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1 offenses or a gun, and they haven't accomplished the goal.
2 They haven't, apparently, left Mr. Hudson in a place where he
3 has decided he will turn away from criminal activity. For that
4 reason, we believe that there is a significant need here for
5 specific deterrence and to promote respect for the law, and to
6 punish Mr. Hudson and his co-conspirators for what they do in
7 this community and the effect that the narcotics activity there
8 has on the people who live there.

9 I'll also note that in cases like this, where there
10 are multiple defendants from a relatively concentrated area,
11 who everyone knows to be the drug dealers in the area, when
12 they are taken in a federal case, people in the community know
13 that. In another case, I have seen a text message from one
14 defendant to another, or from one of the defendant's brothers
15 to the defendant, with the press release from this case,
16 saying, "The Feds are here, gettin' serious," something to that
17 effect. There is a need for general deterrence; there's a need
18 for people who, time after time after time, are caught in the
19 state and end up with misdemeanors or conditional discharges
20 and continue with these long-running drug conspiracies that
21 when a case like this finally hits, the consequence comes with
22 it. That is, we think, an important aspect of cases like this
23 and that there is a general deterrent value of people
24 recognizing that at some stage there will be a real sentence to
25 face if they continue to get caught and continue to engage in

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1 the activity.

2 So under the guideline range that probation
3 calculates, which is already quite a bit lower than the one
4 that the parties stipulated to, but we accept that that is the
5 range, 70 to 87 months, we believe that it is appropriate and
6 warranted here, and necessary. Mr. Padilla received 66 months,
7 and we believe that 70 to 87 is a range that very fairly and
8 appropriately accounts for Mr. Hudson's conduct, his place
9 relative to his co-defendants, and would accomplish the goals
10 of sentencing.

11 THE COURT: But is it your view that in certain
12 material respects Mr. Hudson and Mr. Padilla are similarly
13 situated, or is it your view that by any metric Mr. Hudson is
14 more culpable or deserves a greater punishment than
15 Mr. Padilla?

16 MR. BALSAMELLO: I think they're similar only in the
17 respect that they were street-level drug dealers. I think when
18 you just categorize them that way, they fit that general bill.
19 When you look at the extent of criminal history, different
20 numbers of convictions, Mr. Hudson having one of them for a
21 gun, he has double the number of prior convictions Mr. Padilla
22 did, I think that fact alone speaks to a difference between
23 them. I think the fact that Mr. Padilla was coming to
24 Mr. Hudson at times for product speaks to a slight difference
25 in their relationship. That's not to mitigate anything

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1 Mr. Padilla did.

2 THE COURT: No.

3 MR. BALSAMELLO: We argued for a guidelines sentence
4 with him as well and believe that to be appropriate. But here,
5 comparing the two of them, I know Mr. Moskowitz, in his view,
6 argued that Mr. Hudson may actually be less culpable or
7 deserving of a lower sentence, and the government certainly
8 sees no basis for that. The only places where they can be
9 distinguished is a way in favor of a greater sentence for
10 Mr. Hudson.

11 THE COURT: Thank you very much.

12 MR. BALSAMELLO: Thank you.

13 THE COURT: Mr. Moskowitz, I'll hear from you now.

14 MR. MOSKOWITZ: Judge, I'm not going to even attempt
15 to downplay the significance of drug dealing in the
16 neighborhood. I accept what Mr. Balsamello says about the
17 effect on the neighborhood. I think we can all agree with
18 that.

19 The real issue here, Judge, is your Honor has to
20 decide what is sufficient but not greater than necessary to
21 accomplish the goals of sentencing set out in 3553(a). And 60
22 months, five years, the mandatory minimum in this case, is a
23 substantial sentence, and it is sufficient to accomplish the
24 goals of sentencing.

25 As Mr. Balsamello correctly pointed out, Mr. Hudson

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1 has quite a number of arrests. I take exception, I will note,
2 with drawing any real inference from law enforcement contact.
3 Arrests are sealed for a lot of good reasons. When they are
4 sealed but nonetheless require criminal history points,
5 probation includes them; when they're, for example, juvenile
6 offenses. When they do not require criminal history points,
7 they're sealed and probation doesn't consider them. It usually
8 means they're dismissed or there was an ACD or something like
9 that. But no inference should properly be drawn from police
10 contact. We certainly know that Mr. Hudson was living in a
11 neighborhood during the period of time of stop and frisk, and
12 police contact during that period of time certainly fell
13 unfavorably heavily on minorities. And many of those arrests,
14 as we know from Mr. Hudson's criminal history, were just
15 dismissed and sealed. So I don't think your Honor should draw
16 any inference at all from that.

17 With respect to his convictions, I would point out the
18 most serious one, which is the possession of a weapon, for
19 which he got one year, was eight years ago, at the age of 21.
20 Mr. Hudson is now 30, and as I'm going to discuss with the
21 Court, I think Mr. Hudson really has made substantial progress
22 towards moving out of the life that he once had, and he's going
23 to talk to you about that too in terms of what his plans are
24 and what his hopes are. But as serious as it was, he did his
25 time for it, and it was a substantial period of time ago. And

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1 so while clearly it is of concern, and any weapons possession
2 is of concern, it was not accompanied by acts of violence,
3 thankfully, and since that time, since 2011, there hasn't been
4 a repeat, despite other, shall we say police contact, or even
5 arrests and convictions.

6 The reality, Judge, is that Mr. Hudson is, in many
7 respects, unexceptional in terms of the types of defendants
8 that your Honor sees, or the court here sees in drug cases.
9 He's a street-level drug dealer. I really believe that an
10 attempt to call him a supplier when he's selling a couple of
11 bags to somebody who then may sell one of those bags to
12 somebody else so that he can pay for the drugs is a vast
13 overstatement. Sell somebody four bags and he uses two to get
14 the money to buy the four, that could hardly really be called a
15 supplier.

16 But really, with respect to Mr. Hudson, while the
17 organization had a lot of people in it and Mr. Hudson worked
18 for it for a period of time, he was your basic street-level
19 dealer. And for someone of that nature to get five years on a
20 case is a lot of time. There's no other way to put it. Those
21 of us who are in the business, who are in court dealing with
22 these cases all the time, we kind of lose sometimes perspective
23 on exactly how much, you know, time that is. Five years is a
24 lot of time in somebody's life. It's at the moment, you know,
25 20 percent of his life, almost 20 percent of his life. So it

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1 constitutes a severe sentence. It's much greater than anything
2 he's ever had. And it is going to have a deterrent effect.
3 And I submit to the Court that the extra ten months that would
4 come at the bottom end of the guideline range is not going to
5 make a difference in terms of deterrence for Mr. Hudson, nor is
6 it going to have a significantly greater general deterrent
7 effect. Nobody's going to say, boy, if I can get 60 months,
8 I'll sell the drugs, but if I get 70 months, I'm not going to
9 sell the drugs. That's not the type of calculation -- and
10 nobody is going to think that a 60-month sentence is lenient
11 but a 70-month sentence is severe or draconian, and that's not
12 going to be the factor that's going to change somebody's mind
13 in terms of, if you're sending a message to the public that
14 we're not going to tolerate this behavior.

15 I think actually, to a certain extent, you know, when
16 we talk about just punishment, certainly a five-year sentence
17 for a street dealer is just punishment. Because it's viewed in
18 the context of a conspiracy. Again, clearly recognizing if
19 this were in the state situation, if this were a state case,
20 this would be much less. Obviously it's not, and he's facing a
21 mandatory minimum, and that is a substantial sentence.

22 Now it's interesting; in my discussions with
23 Mr. Hudson and talking about his background and sitting and
24 listening to him talk about his background in the context of
25 the probation interview, it struck me he's had a very difficult

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1 upbringing, a mother who was not available, who had her own
2 substance abuse problems, a father who was not available.

3 THE COURT: Could we pause to appreciate the very sad
4 irony of that, that in watching the absence of his mother, he
5 actually went into the very profession that caused her to be
6 absent?

7 MR. MOSKOWITZ: Yes, Judge. I understand that. And
8 it is tragic, and it is ironic in many respects. But you don't
9 get there -- you don't think about it in that context. There's
10 a lot of things that go on until you get to that point.
11 Clearly there's a whole environment that one grows up with.
12 And the point I was making, Judge, is that to me, when I heard
13 Mr. Hudson's biography, it sounded sad, in fact tragic in many
14 respects, and yet when Mr. Hudson wrote to the Court, he wrote
15 to the Court about being raised by his grandparents and the
16 love that he got from them and how wonderful that was. And
17 yes, that shows a certain maturity on his part and a certain
18 appreciation for things that he had. As tough as it was, it
19 wasn't as tough, clearly, as many others who come into this
20 courthouse, because he had people who cared for him. And now
21 we're actually seeing that those who care for him are still
22 around. His aunts are here. And in fact his father is here,
23 which is a testament to him.

24 So Mr. Hudson, I think it takes a lot to understand
25 that with all the difficulties that he had in his family life

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1 and in his personal life, yet he appreciates the fact that
2 there were people who did care for him and tried their hardest.
3 And clearly his grandparents, he was a little bit much for
4 them, and it was very difficult for them to deal with him, and
5 that has to do with his own issues. You know, Mr. Balsamello
6 is correct. His ADHD and his depression or bipolar disorders,
7 those aren't excuses for what he did, but what they do reflect
8 is the difficulties that he had in his life that made it
9 difficult for his grandparents to keep him under control and
10 why, how he ended up out on the street where he ended up. And
11 a lot of the poor judgment that comes from those disorders,
12 untreated, help explain -- not justify, not excuse, but help
13 explain how he ended up where he ended up. And it's been my
14 experience that drug use -- and Mr. Hudson clearly had a
15 substantial history of drug use, mostly marijuana and alcohol.
16 Those go hand and hand with the type of psychological disorders
17 that he had. People, young men particularly, with ADHD very
18 often use marijuana and alcohol as self-medication because it
19 helps calm them down. And that's certainly an issue that
20 Mr. Hudson suffered from.

21 My relationship with Mr. Hudson, such that it is, it's
22 a relatively short one, but my involvement with him, in my
23 speaking to him, my meetings with him, indicate to me that he
24 really is dedicated now to moving on from this. And I think
25 his letter to the Court simply and straightforwardly tries to

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1 accomplish that, and Mr. Hudson I think is going to talk to
2 that.

3 What is worth noting, because it's not always the case
4 in these cases, is Mr. Hudson has managed to keep a clear
5 disciplinary record. When I went to see him last, I'd actually
6 got to see him not wearing his prison uniform but wearing his
7 kitchen uniform, because he is a cook in the kitchen, and it is
8 something that he is passionate about, something that I think
9 he would like to go to work in when he gets out, and whatever
10 sentence your Honor gives him, he's going to be, you know, 33,
11 34 when he gets out, somewhere in that vicinity. He's gotten
12 to the point where he's getting close to what we call aging
13 out, which obviously you can always commit crimes, even later
14 in life, but the statistics tell us that the older you get, the
15 less likely you are to repeat, and Mr. Hudson I think really is
16 committed to that.

17 He talks about his children. He certainly wants to be
18 the type of father that he didn't have when he was growing up.
19 And I really do believe he's ready to move on with his life.

20 So the real question, Judge, is, do the extra ten
21 months really have to be imposed, or even more extra, a year?
22 I know your Honor has a 17-month guideline range, but probation
23 is recommending 70 months, so I'm looking at the differential
24 between 60 and 70 as the playing field, so to speak, without,
25 obviously, stepping on the Court's discretion.

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1 Is it necessary? Or is it greater than necessary? I
2 think 60 months accomplishes the purposes of 3553(a), and I'd
3 ask your Honor to impose a sentence of 60 months.

4 I would also include in that, given Mr. Hudson's
5 substance abuse history, that he be designated to a facility
6 where he at least has the opportunity, or where he could
7 possibly get into an RDAP program, the residential drug
8 treatment program. All the outpatient programs he's gone to
9 have not quite accomplished it. I think this is a program that
10 has been shown to be effective; certainly among the clients
11 that I've had, many of them have had it and have managed to
12 stay clean. So I think it is one of the programs at the BOP
13 that is successful, and I'd ask the Court to include that in
14 its recommendation, wherever he is designated.

15 THE COURT: Sir, before you sit down, in your
16 submission to me there were discussions about things that
17 Mr. Hudson was doing while incarcerated to perhaps better
18 himself, to prepare for re-entry, however you'd like to look at
19 it. And so one thing was his seeking and obtaining a position
20 in the culinary arts, which is where he is very interested. I
21 thought there was discussion as well about him studying for --

22 MR. MOSKOWITZ: Studying for his GED, yes.

23 THE COURT: Has he taken it?

24 THE DEFENDANT: No. Never got a chance to.

25 THE COURT: It is his intention to take it at some

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1 point.

2 MR. MOSKOWITZ: Yes.

3 THE COURT: I'm aware, and I know you're aware, that
4 there aren't an enormous number of programs that one can take
5 in either of the transitional facilities that would serve this
6 courthouse. I didn't know if there were specific things he
7 wanted me to know about courses he had taken or programs he had
8 done or things of that nature.

9 MR. MOSKOWITZ: I think, Judge, his work history and
10 the -- it was really interesting for me to see his
11 relationship, just even with the COs at the MCC, as somebody
12 who works in the kitchen. It is a responsible job. It is one
13 that he is apparently quite good at, and one that everybody in
14 the facility seems to know and associate with him. So I think
15 that -- and it's one that requires him to be up very early and
16 work quite long hours. So I think that has probably diminished
17 his ability to be in some of the other programs that might
18 otherwise have been available to him. I know that when I see
19 him, he's normally quite exhausted from the work that he's been
20 doing, so I think that he's made that decision that that was
21 the most productive use of his time and it allowed him to do
22 something that he liked, and one where I think he's hoping to
23 have a future in when he gets out.

24 THE COURT: Thank you for letting me know. I'll let
25 you get back to your client.

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1 Mr. Hudson, you are invited to speak to me if you want
2 to. I do want to make clear at the outset that you're not
3 under any obligation to speak with me at this time, and I have
4 read the written submission that you gave to me. It was
5 attached as an exhibit to your attorney's submission. But if
6 at this time there's something you'd like to say to me, I'd be
7 happy to hear from you. I'd just ask this, sir. Given this
8 courtroom, I'll ask you to take the microphone that's to your
9 left, or maybe to your right, bring it a little bit closer to
10 you, and if you could please speak slower and louder than you
11 think you need to so we all can hear you. Thank you, sir.

12 THE DEFENDANT: What can I say. Good afternoon.

13 THE COURT: Good afternoon, sir.

14 THE DEFENDANT: I want to thank my family for showing
15 up for me today. I appreciate that, and I love each and every
16 one of them, and I'm sorry for them having to go through this,
17 what I'm going through right now, 'cause they going through it
18 with me too.

19 Your Honor, I'm a changed person. I've been a changed
20 person for the last four to five years. Ever since my
21 grandmother passed, I've been on the right path. Yes, I made
22 stupid decisions that got me in here, but deep down, I am a
23 changed person.

24 And that's all I got to say.

25 THE COURT: Okay. Thank you very much.

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1 Mr. Hudson, when I sentence someone, I do not come on
2 the bench with a decision in mind because it is very important
3 for me to keep an open mind until I've heard from everyone, and
4 I've now heard from you. I'm going to gather together the
5 notes that I've taken today and the notes that I took on the
6 written submissions, and I'm going to step off the bench for
7 about five or ten minutes, and then I'll come back with a
8 sentence. I just want to make clear that it is not my
9 intention to intensify any anxiety you might have; it's just to
10 me the fairest way of addressing this. So I'm going to ask for
11 your patience while I do what I need to do, and I'm going to
12 ask the Marshals if they would please permit you to speak with
13 your family members, since they've come here to see you today.

14 I'll be back when I can. Thank you very much.

15 THE DEPUTY CLERK: All rise.

16 (Recess)

17 (In open court)

18 THE COURT: Thank you very much, and please be seated.

19 I will describe the sentence that I now intend to
20 impose, but I will give the attorneys an opportunity to make
21 legal objections before I actually impose the sentence.

22 Before I do that, I want to just extend my
23 appreciation to a couple of different groups of people today.
24 My thanks to the attorneys who have given me a lot to think
25 about in both the written submissions and the oral

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1 presentations today, and my thanks as well to the family
2 members who have come to show their support for Mr. Hudson.
3 Some of you have written to me, and your writings have given me
4 a different perspective, one that I wouldn't get from a rap
5 sheet or from the conduct in this case, so I appreciate that,
6 and I'm sure that Mr. Hudson is aware of your devotion to and
7 appreciation of him, and I'm sure he appreciates that as well.
8 So I wanted to thank you for coming here today.

9 So as I said, I really appreciated the statements made
10 by counsel because I think they both have some very valid
11 points, and I'll talk about them in just a minute. But I want
12 to begin by noting the factors that I have to consider under
13 Section 3553(a) in imposing a sentence. And not all of these
14 have equal relevance, so I'll just mention the ones I have
15 focused on the most: The nature and circumstances of the
16 offense; the history and characteristics of the defendant; the
17 need for the sentence imposed to reflect the seriousness of the
18 offense, to promote respect for the law, to provide a just
19 punishment for the offense, to afford adequate deterrence to
20 criminal conduct, to protect the public from further crimes by
21 Mr. Hudson, to provide him with needed educational and
22 vocational training, medical care, or other correctional
23 treatment in the most effective manner; I must consider the
24 Sentencing Guidelines, and I will speak about them momentarily;
25 and I must consider the need to avoid unwarranted sentence

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1 disparities amongst similarly situated defendants.

2 My guidelines calculations replicate those in the
3 presentence investigation report. There is a base offense
4 level of 28; under guidelines Section 2D1.1, a three-level
5 reduction for acceptance of responsibility, and an adjusted
6 offense level of 25. Mr. Hudson has four criminal history
7 points, yielding a criminal history category of III, and a
8 resulting guidelines range of 70 to 87 months.

9 I've been asked by the defense to focus on the
10 parsimony provision, which I do, because it is there, and it
11 requires me to impose a sentence that is sufficient but not
12 greater than necessary to comport with certain sentencing
13 factors that are set forth.

14 I also, though, need to step back and consider the
15 factors themselves, and I've done that, and I've focused on
16 some in particular, including the seriousness of the offense
17 and the history and characteristics of Mr. Hudson, the need for
18 deterrence, and, in this case, because both sides have argued
19 it to me, the need to avoid unwarranted sentence disparities
20 amongst similarly situated defendants.

21 I've been asked to compare, or contrast, Mr. Hudson's
22 background with that of Mr. Padilla, who received 66 months
23 from me. As it happens, they have the same guidelines range,
24 with one having a higher amount of product and the other having
25 a greater criminal history category. Both are subject to the

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same mandatory minimum. It matters to me certain ways in which the two differ. Mr. Hudson has a greater criminal history category. He has more violence in his background. There is the use of a gun, and there is a concern about violence from that. I'm also a little bit concerned about some of his statements to me today. Mr. Hudson indicated that he had changed in the last five years, but based on my understanding of what's in the presentence investigation report, he was engaged in this conduct during that period of time. I hope, and Mr. Moskowitz wants to assure me, that Mr. Hudson has learned from this experience and that he is not going to repeat past mistakes. I hope that's the case.

But given that he has a slightly different and a slightly more violent criminal history category, I'm imposing a term of 68 months' imprisonment. I'm varying downward, but just slightly, because I do think, having sentenced Mr. Padilla, he has a different and a more troubling background than Mr. Padilla.

And I'm ordering that the term of imprisonment be followed by a term of supervised release of four years, with the mandatory, standard, and special conditions of supervised release.

I am not imposing a fine or restitution or forfeiture, but I am obligated to impose a \$100 mandatory special assessment.

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1 Mr. Balsamello, is there any reason why I may not
2 impose this sentence?

3 MR. BALSAMELLO: No, your Honor.

4 THE COURT: Mr. Moskowitz, is there any reason why I
5 may not impose this sentence?

6 MR. MOSKOWITZ: No, your Honor.

7 THE COURT: Thank you.

8 Mr. Hudson, please rise.

9 Mr. Hudson, after considering all of the factors set
10 forth in Section 3553(a) of Title 18 of the United States Code,
11 I find that a term of 68 months' imprisonment is sufficient but
12 no greater than necessary to comport with all of the purposes
13 of sentencing.

14 I will order that that term of imprisonment be
15 followed by the mandatory minimum term of four years of
16 supervised release, with the mandatory, standard, and special
17 conditions that are outlined in the presentence investigation
18 report.

19 I am not imposing a fine or restitution or forfeiture,
20 but I must impose a \$100 mandatory special assessment.

21 Do you understand that, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: Please be seated, sir.

24 Mr. Moskowitz, there was a request for the RDAP
25 program. I will certainly make that recommendation.

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1 Does your client have a requested place of
2 designation?

3 MR. MOSKOWITZ: Just within the northeast region, as
4 close to New York as possible. As you can see, there is family
5 that would like to visit, and the closer the better. So I
6 guess it's a facility within the region that has RDAP.

7 THE COURT: That is in fact the recommendation we will
8 make. We'll have it as close to the New York City metropolitan
9 area as possible.

10 Mr. Moskowitz, are there any additional
11 recommendations you would like me to make for your client?

12 MR. MOSKOWITZ: No, your Honor. Thank you.

13 THE COURT: Thank you.

14 Mr. Balsamello, are there any underlying charging
15 instruments as to which you seek dismissal?

16 MR. BALSAMELLO: I don't believe that there are. If
17 there are, I move to dismiss them, but I don't believe there
18 are.

19 THE COURT: I don't believe there are.

20 Mr. Moskowitz, are you aware of any underlying
21 charging instruments with respect to your client?

22 MR. MOSKOWITZ: No, your Honor.

23 THE COURT: All right, then. I don't want to have
24 then a nullity of dismissing things that aren't there, so I
25 won't do that.

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1 Mr. Balsamello, is there anything else from the
2 government's perspective that you would like to bring up at
3 this proceeding?

4 MR. BALSAMELLO: No, your Honor. Thank you.

5 THE COURT: All right. Thank you.

6 Let me please advise Mr. Hudson of this. Mr. Hudson,
7 to the extent that you have not waived this in any plea
8 agreement that you may have with the government, you have the
9 right to appeal from your conviction and from your sentence.
10 If appeal is something that you're interested in, please speak
11 with Mr. Moskowitz at your earliest opportunity. Generally
12 speaking, you have two weeks from the date that the written
13 judgment of conviction is entered in order to file a notice of
14 appeal. It's my expectation that the written judgment of
15 conviction will be entered probably tomorrow. I don't think it
16 will get in today, and I hope to have it done tomorrow. So
17 from there, I'll imagine you have two weeks to decide what you
18 wish to do. If you're interested at all in the process of
19 appeal, please speak with Mr. Moskowitz as soon as you can. He
20 is familiar with the process, and he can explain to you the
21 first steps that you would need to take. Do you understand,
22 sir?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Mr. Moskowitz, is there
25 anything else you wish to bring to my attention on behalf of

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1 your client?

2 MR. MOSKOWITZ: Not at this time, your Honor. Thank
3 you.

4 THE COURT: All right. Thank you very much.

5 Mr. Hudson, you were very, very well served by your
6 counsel, and he did a lot to make me see the many ways in which
7 you're trying to change your life. Today, before me, and
8 before your family and loved ones, you also committed to
9 changing your life and to taking a different path than that
10 which you've taken in the past. I'm sure that you will do that
11 when you leave, but I'm sure that you will remember and always
12 be a credit to the woman who raised you and who you still
13 treasure so deeply in your heart. I will simply tell you, sir,
14 it's my hope that you and I not see each other in this context
15 again. That will mean you will have violated your conditions
16 of supervised release, and I don't -- well, I can imagine you
17 don't want to see me in this context again, and I will take no
18 offense if that's the case. But my hope is that while you are
19 incarcerated, you make use of whatever programs the BOP offers
20 in your place of designation to better yourself, to get the
21 experience that you want, to get the GED that I agree will help
22 you out so much in your life, and that you leave prison with a
23 renewed hope and focus, and I wish you well in that regard,
24 sir.

25 THE DEFENDANT: Thank you.

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1 THE COURT: All right. Thank you very much. We're
2 adjourned.

3 THE DEPUTY CLERK: All rise.

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